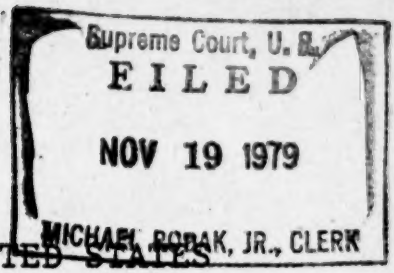

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 79-326

UNITED STATES OF AMERICA,

Petitioner,

v.

MABEL DUNCAN, et al.,

Respondents,

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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QUESTION PRESENTED

The Petition presents the question of whether Indians of the Robinson Rancheria may sue the United States under the Tucker Act, 28 U.S.C. §§1346 and 1491, for money damages sustained by reason of breaches by the United States of trust and statutory obligations in the implementation of the California Rancheria Act on the Robinson Rancheria.

By its Petition, the United States also would present to the Court the question of whether, assuming that the United States is answerable in money damages for breaches of its trust obligations under the California Rancheria Act, damages may be awarded for injuries not proximately caused by breaches of trust and statutory obligations.

However, because the Court of Claims has not yet actually awarded any damages in this case, and has not yet authorized recovery of damages for any injuries which cannot be characterized as proximately caused by the breaches of trust and statutory obligations already adjudged to have occurred, Respondents contend that the question of what kinds of injuries may be

compensable under the circumstances of this case is not yet presented to the Court.

FEDERAL LAWS INVOLVED

1. 28 U.S.C. §1491;
2. The California Rancheria Act, P.L. 85-671, 72 Stat. 619-620, August 18, 1958, as amended by P.L. 88-419, 78 Stat. 390, August 11, 1964,
2. 25 C.F.R. Part 242 (1959 and as amended in 1965).

The texts of the relevant protions of these laws are set forth in the Appendix hereto. The texts of the original and amended Rancheria Acts, and the original and amended Rancheria Act Regulations, are set forth in parallel form for ease of comparison.

STATEMENT OF THE CASE

By Passage of the Act of August 18, 1958, P.L. No. 85-671, 72 Stat. 619 (hereinafter the Rancheria Act), Congress authorized the termination of the trust status of the lands and Indian status of the people of 41 named Rancherias (small Indian reservations) in California. Passage of the Rancheria Act represented the culmination of more than a decade of federal efforts to effect the assimilation of the Indian people of California into the surrounding non-Indian society. 1/

Because living conditions on California Rancherias generally were extremely substandard in comparison to conditions prevailing in adjacent non-Indian communities, and because Rancheria Indians generally were less educated than their non-Indian neighbors, the Rancheria Act expressly provided that Indians choosing to accept termination of the trust status

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1/ These "efforts" had consisted, in large measure, of the continual reduction in Bureau of Indian Affairs (B.I.A.) services to California Indians, and B.I.A. conduct which was intended to and did in fact create in the Indian community the impression that only by accepting termination would any services be obtained.

of their Rancheria lands and their personal status as Indians would, under the act, receive in return, prior to termination taking effect, fee title to their lands, water, sanitation and other improvements necessary to enjoy and utilize their lands and vocational training and educational assistance necessary to successfully function in non-Indian society. Mabel Duncan, et al, v. Andrus, et al., No. C-71-1572 WWS (N. Dist. Calif., March 21, 1977); Duncan, et al., v. U.S.A., 597 F.2d 1337 (Ct. Cl. 1979); Daniels, et al., v. Andrus, No. C-74-1061 WTS (No. Dist. Calif., Aug. 4, 1978); Smith v. U.S.A., No. C-74-1016 WTS (No. Dist. Calif., 1979); See also, Hearings on H.R. 2576, H.R. 2824, H.R. 2838, H.R. 6364, House Interior Subcommittee on Indian Affairs, 85th Cong., 1st Sess., ser. 13 (1957). To provide the services and improvments which the Act mandated must be provided prior to lawful termination under the Rancheria Act, Congress

authorized the appropriation of $509,235.[2/]

Under the 1958 Rancheria Act, the termination process was to be initiated with the preparation, by the Secretary of the Interior or by the Indians of a Rancheria, of a plan for the distribution of the Rancheria's assets (hereinafter "distribution plan"). The distribution plan was to provide for not only the distribution and/or disposition of a Rancheria's assets, but also identification of the persons entitled to share in the Rancheria's assets. Rancheria Act §2(a). [3/]

2/ However, unknown to California Indians, Congress never actually appropriated any such funds, because the B.I.A. never requested that any funds be appropriated. Apparently, the B.I.A. secretly had represented to members of Congress that no such funds would be sought, and that the provisions of the Rancheria Act would be carried out within the regular B.I.A. budget--the same budget which had been inadequate to provide these same services for nearly a decade! Deposition of Leonard Hill, former Director of the B.I.A. Sacramento Area Office; Exhibit 4 to Respondents' motion for summary judgment in the Court of Claims.

3/ The 1964 amendment to §2(a) directs that a distribution plan be prepared only when the Indians of a Rancheria request that the Rancheria's assets be distributed.

Once the distribution plan had been prepared, the plan was to be approved by the Secretary of the Interior, and thereafter was to be submitted to a referendum by the adult Indian participants in the proposed distribution. If, by referendum, the Indians approved the plan, the plan was to be carried out. Rancheria Act §2(b).

Real property distributed under the Act was to be conveyed in unrestricted fee title [Rancheria Act, §2(c)], and no property distributed under the provisions of the Act was at the time of distribution to be subject to any Federal or State income tax. Following distribution, such property would be subject to the same taxes, State and Federal, as in the case of non-Indians. Rancheria Act, §2(d).

§3 of the 1958 Rancheria Act provided as follows:

> §3 Before making the conveyances authorized by this Act on any Rancheria or reservation, the Secretary of the Interior is directed:
>
> §3(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or appropriate for the conveyances of marketable and recordable titles to the lands.

> §3(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof. The Secretary is authorized to contract with the State of California or political subdivision thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government the Secretary is authorized to convey rights-of-way for such roads, including any improvements thereon.
>
> §3(c) To install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.

In 1964, §3(c) was amended to read as follows:

> To construct, improve, install, extend, or otherwise provide, by contract or otherwise, sanitation facilities (including domestic and community water supplies and facilities, together with necessary appurtenances and fixtures) and

irrigation facilities for Indian homes, communities, and lands, as he and the Indians agree, within a reasonable time, should be completed by the United States; Provided, That with respect to sanitation facilities, as hereinbefore described, the function specified in this paragraph, including agreements with Indians with respect to such facilities, shall be performed by the Secretary of Health, Education, and Welfare in accordance with the provisions of section 7 of the Act of August 4, 1954 (58 Stat. 674), as amended (42 U.S.C. 2004a).

§10(b) of the 1958 Rancheria Act provided as follows:

> After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States.

In 1964, §10(b) was amended as follows:

> After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families <u>who are not members of any other tribe or band of Indians</u>, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, <u>all restrictions and tax exemptions applicable to trust or restricted land or interests therein owned by them are terminated</u>, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States. <u>The provisions of this subsection, as amended, shall apply in the case of a distribution of assets made either before or after the amendment of the subsection</u>.

[Emphasis added].

Upon approval of a distribution plan by the Indians of a Rancheria, the constitution and charter of the Rancheria's tribal government were to be revoked. [Rancheria Act, §11].

§12 of the Rancheria Act authorized the Secretary of the Interior to issue such rules and regulations as he deemed necessary to carry out the provisions of the Act. Pursuant to this section, the Secretary adopted 25 C.F.R. Part 242 in 1959. Following the 1964 amendments to the Rancheria Act, the Secretary amended those Regulations in 1965; however, the 1965 amendments were invalidated by a three-judge district court in Kelly v. Department of the Interior, 339 F. Supp. 1095 (E.D. Calif., 1972).

The Robinson Rancheria, in Lake County, California was one of the 41 Rancherias which were named in the 1958 Rancheria Act as authorized for termination. The Robinson Rancheria distribution plan was approved by the Indians of the Rancheria on February 25, 1960, and the assets of the Rancheria were distributed between 1961 and 1963.

For many years prior to the approval of the Robinson Rancheria distribution plan, the people of the Rancheria had lacked adequate water, sanitation and irrigation facilities, decent housing and other basic amenities of modern life. Although §3 of

the Rancheria Act required the Secretary of the Interior (and under the 1964 amendments to the Act, the Secretary of Health, Education and Welfare) to provide such water and sanitation facilities and other improvements as the Secretary and the Indians might agree upon, no separate agreement for such improvements was negotiated under the Rancheria Act. Rather, the distribution plan recited the Indians' "request" that the inadequate existing water system be extended to (but not into) any home at least 50% completed within 90 days after approval of the plan.

In 1965, the Secretary of H.E.W. agreed under 42 U.S.C. §2004 (rather than under the Rancheria Act) to provide certain sanitation facilities for most of the then-existing houses on the Rancheria. However, no additional water supplies were developed to provide the additional water needed to operate the new facilities, and many of the facilities were defective or otherwise inadequate.

§3(a) of the Rancheria Act required the Secretary of the Interior to convey "marektable and recordable titles" to Rancheria lands. §5(b) of the Act includes

among the assets of the Robinson Rancheria to be conveyed to the Indians thereof one half of a 160-acre woodlot. Although the Secretary of the Interior conveyed to the Indians of the Robinson Rancheria fee title to their 80-acre woodlot, the Indians did not receive deeded access to the property, and their title thus was not marketable. See, e.g., Calif. Gov't. Code §66410, et seq.

As soon as the lands of the Robinson Rancheria were distributed among the Indians thereof, the lands were taxed by Lake County, a subdivision of the State of California. Robinson Rancheria Indians receiving public assistance were required to give liens on their lands, and to utilize or sell their lands in order to maintain their eligibility for public assistance. Also, the lands became subject to execution by judgment creditors.

At the same time as the lands of the Rancheria lost federal trust status, the Indian people of the Robinson Rancheria (distributees and dependent members of their families) lost their status as Indians under the laws of the United States, and thus became ineligible to receive any federal benefits provided to Indians because

of their status as Indians. 4/ Thus, these people were denied such B.I.A. services as medical care, housing and educational assistance, preference in hiring, etc.

In 1971, the people of the Rancheria sued the United States and its officers, seeking injunctive and declaratory relief in the district court and, eventually, money damages in the Court of Claims.

The district court in Duncan v. Andrus, supra, held that the trust relationship between the United States and the Indians of a Rancheria named in the Rancheria Act was intended by Congress to continue unless and until a distribution plan had been promulgated and fully implemented "pursuant to" the Rancheria Act, and thus that the language of the Act itself, as well as the conduct of the Secretary of the Interior in promulgating and implementing the Rancheria Act, must be evaluated

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4/ In Knight, et al., v. Kleppe, et al., Nos. C-74-0005 WTS, and C-73-0334 WTS, N.D. Calif., Feb. 20, 1976, the court "unterminated" all persons listed as dependents, on the ground that the procedures under which such persons were listed as dependents deprived them of their right to due process of law.

in the context of the trust relationship.

The district court held that within the context of the trust relationship, the only construction of the Rancheria Act consistent with the federal canon of statutory construction that ambiguities in enactments involving Indians are to be resolved in a manner favorable to the Indians [Bryan v. Itasca County, 426 U.S. 373 (1976)], is that §3 of the Rancheria Act requires the Secretary of the Interior to agree to provide such water, sanitation and other improvements as are reasonably adequate to the needs of the Indians; that the provision of such services or improvements must precede the distribution of a Rancheria's assets; that a distribution of a Rancheria's assets which occurs prior to provision of the mandated services is not made "pursuant to" the Rancheria Act, and that such a distribution does not lawfully terminate either the trust status of the lands or the Indian status of the people of a Rancheria. Moreover, the district court held that both the Secretary's approval of a distribution plan for the Robinson Rancheria which failed to assure the provision of adequate water and

sanitation facilities for the Rancheria, and the distribution of the Rancheria's assets prior to the provision of mandated improvements or services constituted breaches of the trust and statutory obligations of the United States, thus rendering the purported termination of the trust status of the people of the Robinson Rancheria unlawful.

The decision of the district court in Duncan, et al., v. Andrus, et al., supra, has been followed by other district courts in Smith v. U.S.A., supra, Daniels v. Andrus, supra, and Upper Lake Pomo Association v. Andrus, No. C-75-0181 SW (N.D. Calif.) (Motion for Partial Summary Judgment granted, Aug. 15, 1979). Indeed, in Smith v. U.S.A., partial summary judgment holding the United States liable in damages for the sale of Rancheria land for nonpayment of taxes was granted prior to the decision of the Court of Claims which the United States would have this Court review; final judgment awarding money damages to the plaintiff in Smith v. U.S.A., id., was entered on July 2, 1979, and the United States has not appealed that decision.

In this case, the Court of Claims concurred with the holding of the district court that the termination of the lands

and Indian status of the people of the Robinson Rancheria had not occurred "pursuant to" the Rancheria Act, and thus that the termination had been unlawful. The Court of Claims held that the United States had breached the fiduciary obligations owed to the people of the Rancheria under the Rancheria Act; that the statutory context in which the Secretary of the Interior breached the trust obligations owed to the Indians of the Robinson Rancheria can fairly be interpreted as mandating compensation for damages sustained by reason of breaches of trust, and thus that, under the Tucker Act, the United States is liable in money damages for injuries sustained by Robinson Indians as the direct result of such breaches of trust.

REASON FOR DENYING THE PETITION

The United States would have this Court grant the Petition on the grounds that the decision of the Court of Claims erroneously found that a trust relationship existed between the United States and the Indians of the Robinson Rancheria; and that the Court of Claims has jurisdiction of an action for damages under the Tucker Act for breaches of the fiduciary obligations of the United States in the course of implementing the Rancheria Act. Moreover, the United States contends that the Court of Claims impermissibly broadened the range of damages recoverable for breach of trust. An examination of these alleged grounds demonstrates that they are without merit, and thus that no reason exists to grant the Petition.

The Court of Claims' finding of the existence of a trust relationship between the United States and the Indians of the Robinson Rancheria was based, in the first instance, upon a final judgment of the district court in Duncan v. Andrus, supra; not only did the United States decline to appeal the judgment, but also the United States had conceded the existence of such a relationship.

597 F.2d at 1342. The United States has made similar concessions in Daniels v. Andrus, supra, and Smith v. U.S.A., supra, (Hopland Rancheria), and Upper Lake Pomo Ass'n. v. Andrus, supra (Upper Lake Rancheria).

However, the Court of Claims did not simply accept the district court's finding of the existence of a trust relationship; rather, the Court of Claims independently reached the same conclusion, holding that a trust relationship had been created by the statutes under which the Robinson Rancheria had been established, more than 50 years of administrative actions and interpretations by the Department of the Interior and the subsequent recognition of a trust relationship in the Rancheria Act itself. Thus, the suggestion by the United States that the Court of Claims found the existence of a trust relationship absent a basis in statute simply is not correct.

Contrary to the suggestion of the United States (at p. 13 of the Petition), the Court of Claims' premise that, "this court has jurisdiction to award certain types damages for breach of trust,"

597 F.2d at 1341 is not contrary to fundamental principles of sovereign immunity as set forth in United States v. Testan, 424 U.S. 392 (1976), of which the Court of Claims was acutely aware (497 F.2d at 1341).

Testan, when reduced to its essence, did not change the test of whether a particular claim for damages against the United States may be maintained under the Tucker Act. Rather, Testan reaffirmed the test articulated by the Court of Claims in Eastport Steamship Corp. v. United States, 372 F.2d 1002 (Ct. Cl., 1967):

> "It follows that the asserted entitlement for money damages depends upon whether any federal statute can fairly be interpreted as mandating compensation by the Federal Government for the damages sustained." Eastport S.S. Corp. v. United States, 178 Ct. Cl. at 607, 372 F.2d at 1009. . ." [424 U.S. at 400].

In practical effect, Testan holds that if a federal law confers a substantive right to recover damages against the United States, the Tucker Act will supply the necessary waiver of sovereign immunity; i.e., the law creating the right (expressly or impliedly) need not also expressly waive sovereign immunity.

Testan's citation of Eastport demonstrates that this is indeed the case. To dispel any lingering doubts on this point, Respondents would refer the Court to language in a consistent line of decision from the Supreme Court:

> "Nor with due regard to the words of §2 of the Tucker Act and to its legislative history can we say that the United States has consented to the maintenance of suits against the Government in the district courts which could not be maintained in the Court of Claims. The section must be interpreted in the light of its function in giving consent of the Government to be sued, which consent, since it is a relinquishment of a sovereign immunity, must be strictly interpreted."
> U.S. v. Sherwood, 312 U.S. 584, 590 (1941).

> ". . .the Congress in the Act creating the Court of Claims [Act of February 24, 1855, 10 Stat. 612] gave the Government's consent to be sued therein in certain classes of claims. . ."
> Soriano v. U.S., 352 U.S. 270, 273 (1957);

> "In 1855, Congress established the court of Claims and consented to suit therein on claims based on contract or federal law or regulation. This consent was enlarged in 1887 to include all cases for

> damages not sounding in tort."
> Dalehite v. U.S., 346 U.S. 15, 26, n. 10 (1953);

from the Court of Appeals:

> ". . . for contract actions against the United States, Congress, through passage of the Tucker Act, 28 U.S.C. §§1346 (a)(2), 1491, (1970), has consented to suit."
> International Engineering Co. v. Richardson, 512 F.2d 573, 577 (D.C. Cir., 1975).

> ". . . the Tucker Act's waiver [of sovereign immunity] is not conditioned upon the procedural context in which it is sought."
> United States v. Bursey, 515 F.2d 1228, 1234 (5th Cir., 1975).

> "Congress has given the consent to sue the United States in the Tucker Act. . ."
> Pasha v. U.S., 484 F.2d 630, 633 (7th Cir., 1973);

> "The United States Congress has with respect to the Federal Tort Claims Act and the Tucker Act defined the terms and conditions under which the United States has waived immunity to suit. . ."
> Konecny v. U.S., 388 F.2d 59, 62 (8th Cir., 1967);

"Congress, in enacting the Tucker Act (see 28 U.S.C. §§1346 and 1491), which waived sovereign immunity for certain claims, provided for jurisdiction in the federal district court or the United States Court of Claims, but it did not subject the United States to suit in a state court.
Jacobson v. Tahoe Regional Planning Agency, 558 F.2d 928, 940 (9th Cir., 1977);

from the Court of Claims:

"[The Tucker Act is the] statute by which the Government waives its sovereign immunity from suit in certain situations. . ."
Foster v. U.S., 98 F.Supp. 349, 351 (Ct. Cl., 1951);

". . . nor need there be any specific consent-to-suit apart from the Tucker Act. . ."
South Puerto Rico Sugar Co. Trading Corp. v. U.S., 334 F.2d 622, 626 (Ct. Cl., 1964);

"In our general jurisdictional statute, 28 U.S.C. §1491. . ., Congress has waived the immunity of the United States. . ."
Porter v. U.S., 496 F.2d 583, 586 (Ct. Cl., 1974);

"In chapter 91 of 28 U.S.C. §§1491-1506, Congress has waived the immunity of the United States in many classes of actions The Tucker Act, 28 U.S.C. §1491, is the waiver provision relied upon here."

National State Bank of Newark v. U.S., 357 F.2d 704, 706 (Ct. Cl., 1966);

from the district courts:

"The Tucker Act contains the government's consent to be sued in any civil action founded upon the Constitution or upon any express or implied contract with the United States."
Nelson v. U.S., 341 F. Supp. 1353, 1354 (D. Mont., 1972);

"The Tucker Act was intended to waive the doctrine of sovereign immunity in limited conditions."
Vigil v. U.S., 293 F. Supp. 1176, 1184 (D. Colo., 1968);

"The United States of America, as sovereign, consents to be sued when the nature of the claim and the circumstances of suit are such as fall within the provisions of the Tucker Act. . ."
Jentry v. U.S., 73 F. Supp. 899, 901 (S.D. Cal. 1974);

"The Tucker Act consititues a waiver of governmental immunity to suit . . ."
McMichael v. U.S., 63 F. Supp. 598, 599 (N.D. Ala., 1945);

"The consent of the United States to be sued under the Tucker Act is limited to suits for recovery of money judgment."
James v. Ambrose, 367 F. Supp. 1321, 1327 n. 4 (D.V.I., 1973);

"Ordinarily the United States of America may waive its sovereign immunity (1) by statutory consent, usually by operation of the Tucker Act. . ."

U.S. v. Thurber, 376 F. Supp. 670, 673 (D. Vt., 1974).

and from prominent scholars:

"Probably the two best-known exceptions to the sovereign immunity doctrine are the Tucker Act and the Federal Tort Claims Act."

Wright & Miller, Federal Practice and Procedure, Vol. 14, p. 202, §3656 (1976).

"Congressional waiver of the sovereign immunity and grant of consent to be sued, at least in the Tucker Act, must be strictly construed."

Schwartz & Jacoby, Litigation With The Federal Government, American Law Institute, 1970, at p. 140.

The decision of the Court of Claims in this case found that a trust relationship existed between the United States and the Indians of the Robinson Rancheria; that the trust relationship was founded both in statutes and a long history of Department of the Interior policies and practices; that the Rancheria Act conferred upon the Indians of the Rancheria certain rights which the United States denied to the

Indians in violation of both the Rancheria Act and its trust obligations to said Indians thereunder; and that the existence of the trust relationship and the specific obligations imposed by the Rancheria Act could fairly be interpreted as mandating compensation for damages suffered as a result of breaches of federal statutory and trust obligations.

In so holding, the Court of Claims was acting under the same jurisdictional premise as it did in Mason v. United States, 461 F.2d 1364 (1972), reversed on other grounds, 412 U.S. 391 (1973), when it characterized an Indian claim for damages against the United States for breach of trust,

"as a claim upon an Act of Congress and for damages in cases not sounding in tort,"

The Supreme Court reversed the Court of Claims in Mason, but not because the Court of Claims lacked jurisdiction to entertain the action. Rather, the Court expressly noted that the action had been brought under 28 U.S.C. §1491, and proceeded directly to consideration of the only issue before the court:

> "The issue in these cases is whether a trustee in the course of administering its fiduciary obligations is entitled to rely on a directly relevant decision of this Court which has neither been overruled nor questioned." [412 U.S. at 391-392; see also, footnote 5, 412 U.S. at 394].

Had there been any question as to the jurisdiction of the Court of Claims under the Tucker Act to hear a damage claim for breach of trust, that issue certainly would have been raised, either by the government or by the Court; it was not.

Although the Court in Mason held that there had been no breach of trust under the circumstances of that case, and thus reversed the decision of the Court of Claims on that basis, the Court articulated a standard of conduct and measure of liability governing the actions of the United States in its fiduciary capacity which has not been altered:

> "There is no doubt that the United States serves in a fiduciary capacity with respect to these Indians and that, as such, it is duty bound to exercise great care in administering its trust . . . A trustee is under a duty in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property . . . if the trust property is lost or diminished in value, the trustee

> is not subject to a surcharge unless he failed to exercise the required care and skill." [412 U.S. at 398].

Respondents herein urge that the decision of the Court of Claims is the only result consistent with the language and intent of the Rancheria Act, justice and the national honor; this does not overstate the case. The stark, unavoidable and uncontested fact is that the Indians of the Robinson Rancheria were induced by their trustee to surrender their vested statutory rights and status as Indians in what was to be a bargained-for exchange for improvements and services which were essential to the attainment of minimally decent living standards in their own community; those services and improvements never were received.

The people of the Robinson Rancheria unlawfully lost their valuable rights and status as Indians and the unique trust status of their property (and, in most cases, the property itself). They received nothing in return. Amply backed by federal statutes and case law, the Court of Claims has exercised its Tucker Act jurisdiction to hold the United States liable to the Indians

of the Robinson Rancheria for damages proximately related to the unlawful termination of the trust status of the lands and the Indian status of the people of the Robinson Rancheria. There is no just reason to prevent their case from proceeding to adjudication on the issue of damages.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 15, 1979

By: _____
GEORGE FORMAN

Appendix A

§ 1491. Claims against United States generally; actions involving Tennessee Valley Authority

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States. To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. In any case within its jurisdiction, the court shall have the power to remand appropriate matters to any administrative or executive body or official with such direction as it may deem proper and just. The Court of Claims shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under the Contract Disputes Act of 1978.

Nothing herein shall be construed to give the Court of Claims jurisdiction in suits against, or founded on actions of, the Tennessee Valley Authority, nor to amend or modify the provisions of the Tennessee Valley Authority Act of 1933, as amended, with respect to suits by or against the Authority.

As amended Nov. 1, 1978, Pub.L. 95-563, § 14(i), 92 Stat. 2391.

Appendix B

THE CALIFORNIA RANCHERIA ACT.

The Act of August 18, 1958, P.L. 85-671, 72 Stat. 619-62].

The 1958 Rancheria Act, as amended by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390-391.

1958 Act

AN ACT

To provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes.

§1

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands, including minerals, water rights, and improvements located on the lands, and other assets of the following rancherias and reservations in the State of California shall be distributed in accordance with the provisions of this Act: Alexander Valley, Auburn Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

Amended [1964] Act

AN ACT

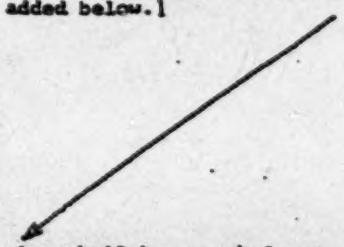
To amend the Act entitled "an Act to provide for the distribution of the land and assets of certain Indian rancherias and reservations in California, and for other purposes", approved August 18, 1958 (72 Stat. 615).

§1

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That the lands, including minerals, water rights and improvements located on the lands, and other assets of the following rancherias and reservations lying wholly within in the State of California shall be distributed in accordance with the provisions of this Act: ~~Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Graton, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Noorestown, Nevada City, North Fork, Paskenta Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Ruffeys, Scotts Valley, Table Bluff, Table Mountain, Upper Lake, Wilton,~~ when such distribution is requested by a majority vote of the adult members of a rancheria or reservation or of the adult Indians who hold forma or informal assignments on the rancheria or reservation, as determined by the Secretary of the Interior. The requirement for a majority vote shall not apply to the rancherias and reservations that were at any time named in this section.

§2(a) ~~The Indians who held formal or informal assignments on each reservation or rancheria or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians;~~ When the Indians of a rancheria or reservation request a distribution of assets in accordance with the provisions of this Act, they, or the Secretary of the Interior after consultation with them shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria, including the assigned and the unassigned lands, or for selling such assets and distributing the proceeds of sale, or for conveying such assets to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common; Provided, That the provisions of this section with respect to a request for distribution of assets shall not apply in any case in which the requirement for such request is waived by section 1 of this Act, and in any such case the plan shall be prepared as though request therefor had been made. The Secretary shall provide such assistance to the Indians as is necessary to organize a corporation or other legal entity for the purposes of this Act.

§2(2) The Indians who hold formal or informal assignments on each reservation or rancheria, or the Indians of such reservation or rancheria, or the Secretary of the Interior after consultation with such Indians, shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria, including the assigned and the unassigned lands, or for selling such assets and distributing the proceeds of sale, or for conveying such assets to a corporation or other legal entity organized or designated by the group, or for conveying such assets to the group as tenants in common. The Secretary shall provide such assistance as is necessary to organize a corporation or other legal entity for the purposes of this Act.

(b) General notice shall be given of the contents of a plan prepared pursuant to subsection (a) of this section and approved by the Secretary, and any Indian who feels that he is unfairly treated in the proposed distribution of the property shall be given an opportunity to present his views and arguments for consideration of the Secretary. After such consideration, the plan or revision thereof shall be submitted for the approval of the adult Indians who will participate in the distribution of the property, and if the plan is approved by a majority of such Indians who vote in a referendum called for that purpose by the Secretary the plan shall be carried out. It is the intention of Congress that such plan shall be completed not more than three years after it is approved.	§2(b) [This section remains the same, except for the langu added below.]  plan shall be carried out: Pro vided, That the provisions of such plan may be modified wit the approval of the Secretary consent of the majority of the distributees. It is the inter of Congress that such plan sha be completed not more than th years after it is approved.
§2(c) Any grantee under the provisions of this section shall receive an unrestricted title to the property conveyed, and the conveyance shall be recorded in the appropriate county office.	§2(c) [Unchanged]
§2(d) No property distributed under the provisions of this Act shall at the time of distribution be subject to any Federal or State income tax. Following any distribution of property made under the provisions of this Act, such property and any income derived therefrom by the distributee shall be subject to the same taxes, State and Federal, as in the case of non-Indians: Provided, That for the purpose of capital gains or losses the base value of the property shall be the value of the property when distributed to the individual, corporation, or other legal entity.	§2(d) [Unchanged]

§3 Before making the conveyances authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:	§3 Before making the conveya authorized by this Act on any rancheria or reservation, the Secretary of the Interior is directed:
§3(a) To cause surveys to be made of the exterior or interior boundaries of the lands to the extent that such surveys are necessary or appropriate for the conveyances of marketable and recordable titles to the lands.	§3(a) [Unchanged]
§3(b) To complete any construction or improvement required to bring Indian Bureau roads serving the rancherias or reservations up to adequate standards comparable to standards for similar roads of the State or subdivision thereof. The Secretary is authorized to contract with the State of California or political subdivision thereof for the construction or improvement of such roads and to expend under such contracts moneys appropriated by Congress for the Indian road system. When such roads are transferred to the State or local government the Secretary is authorized to convey rights-of-way for such roads, including any improvements thereon.	§3(b) [Unchanged]
§3(c) To install or rehabilitate such irrigation or domestic water systems as he and the Indians affected agree, within a reasonable time, should be completed by the United States.	§3(c) [The original language was deleted and following substituted]: To construct, improve, install, extend, or otherwise provide, by contract or otherwise, sanitation facilities (including domestic and community water supplies and facilities, drainage facilities and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures) and irrigation facilities for Indian homes, communities, and lands, as he and the Indians agree, within a reasonable time, should be completed by the United State Provided, That with respect t sanitation facilities, as here inbefore described, the funct specified in this paragraph, including agreements with Ind with respect to such facilitie

[continued next page]

§3(d) To cancel all reimbursable indebtedness owing to the United States on account of unpaid construction, operation, and maintenance charges for water facilities on the reservation or rancheria.

§3(e) To exchange any lands within the rancheria or reservation that are held by the United States for the use of Indians which the Secretary and the Indians affected agree should be exchanged before the termination of the Federal trust for non-Indian lands and improvements of approximately equal value.

§4 Nothing in this Act shall abrogate any water right that exists by virtue of the laws of the United States. To the extent that the laws of the State of California are not now applicable to any water right appurtenant to any lands involved herein they shall continue to be inapplicable while the water right is in Indian ownership for a period not to exceed fifteen years after the conveyance pursuant to this Act of an unrestricted title thereto, and thereafter the applicability of such laws shall be without prejudice to the priority of any such right not theretofore based upon State law. During the time such State law is not applicable the Attorney General shall represent the Indian owner in all legal proceedings, including proceedings before administrative bodies, involving such water right, and in any necessary affirmative action to prevent adverse appropriation of water which would encroach upon the Indian water right.

[§3(c), continued] shall be performed by the Secretary of Health, Education and Welfare in accordance with the provisions of section 7 of the Act of August 4, 1954 (58 Stat. 674), as amended (42 U.S.C. 2004a).

§3(d) [Unchanged]

§3(e) To exchange any lands within the rancheria or reservation that are held by the United States for the use of Indians which the Secretary and the Indians affected agree should be exchanged before the termination of the Federal trust for non-Indian lands and improvements of approximately equal value. [The 1964 amendment strikes the word "non-Indian].

§4 [Unchanged]

1958 Act	1964 Amended Act
§5(a) The secretary of the Interior is authorized to convey without consideration to Indians who receive conveyances of land pursuant to this Act, or to a corporation or other legal entity organized by such Indians, or to a public or nonprofit body, any federally owned property on the reservations or rancherias subject to this Act that is not needed for the administration of Indian affairs in California.	§5(a) [Unchanged]
§5(b) For the purposes of this Act, the assets of the Upper Lake Rancheria and the Robinson Rancheria shall include the one-hundred-and-sixty-acre tract set aside as a wood reserve for the Upper Lake Indians by secretarial order dated February 15, 1907.	§5(b) [Unchanged]
§5(c) The Secretary of the Interior is authorized to sell the five hundred and sixty acres of land, more or less, which were withdrawn from entry, sale, or other disposition, and set aside for the Indians of Indian Ranch, Inyo County, California, by the Act of March 3, 1928. (45 Stat. 162), and to distribute the proceeds of sale among the heirs of George Hanson.	§5(c) [Unchanged]
*****	§5(d) [added by 5(g) of the 1964 Act]: Any rancheria or reservation lying wholly within the State of California that is held by the United States for the use of Indians of California and that was not occupied on January 1, 1964, by Indians under a formal or informal assignment shall be sold by the Secretary of the Interior and proceeds of the sale shall be posited in the Treasury of the United States to the credit of the Indians of California. Any rancheria or reservation lying wholly within the State of California that is held by the United States for a named tribe, band, or group that was not occupied on January 1, 1964, may be sold by the Secretary of the Interior and the proceeds shall be deposited to the credit of the tribe, band, or group.

§6. The Secretary of the Interior shall disburse to the Indians of the rancharias and reservations that are subject to this Act all funds of such Indians that are in the custody of the United States.	§6. [Unchanged]
§7. Nothing in this Act shall affect any claim filed before the Indian Claims Commission, or the right, if any, of the Indians subject to this Act to share in any judgment recovered against the United States on behalf of the Indians of California.	§7. [Unchanged]
§8. Before conveying or distributing property pursuant to this Act, the Secretary of the Interior shall protect the rights of individual Indians who are minors, non compos mentis, or in the opinion of the Secretary in need of assistance in conducting their affairs, by causing the appointment of guardians for such Indains in courts of competent jurisdiction, or by such other means as he may deem adequate, without application from such Indians, including but not limited to the creation of a trust for such Indians' property with a trustee selected by the Secretary, or the purchase by the Secretary of annuities for such Indians.	§8. [Unchanged]
§9. Prior to the termination of the Federal trust relationship in accordance with the provisions of this Act, the Secretary of the Interior is authorized to undertake, within the limits of available appropriations a special program of education and training designed to help the Indians to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. Such program may include language training, orientation in non-Indian community customs and living standards, vocational training and related subjects, transportation to the place of training or instruction, and subsistance during the course of training or instruction. For the purposes of such program, the Secretary is authorized to enter into contracts or agreements with any Federal, State, or local governmental agency, corporation, association, or person. Nothing in this section shall preclude any Federal agency from undertaking any other program for the education and training of Indians with funds appropriated to it.	§9. [Unchanged]

§10(a). The plan for the distribution of the assets of a rancheria or reservation, when approved by the Secretary and by the Indians in a referendum vote as provided in subsection 2(b) of this Act, shall be final, and the distribution of assets pursuant to such plan shall not be the basis for any claim against the United States by an Indian who received or is denied a part of the asset distributed.	§10(a) [Unchanged]
§10(b). After the assets of a rancheria or reservation have been distributed pursuant to this Act, the Indians who receive any part of such assets, and the dependent members of their immediate families, shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and the laws of the several States shall apply to them in the same manner as they apply to other citizens or persons within their jurisdiction. Nothing in this Act, however, shall affect the status of such persons as citizens of the United States.	§10(b). After the assets of a rancheria or reservation have distributed pursuant to this A the Indians who receive any pa of such assets, and the depend members of their immediate fa who are not members of any oth tribe or band of Indians, shal not be entitled to any of the services performed by the Unit States for Indians because of their status as Indians, all r strictions and tax exemptions applicable to trust or restric land or interests therein owne by them are terminated, all statutes of the United States which affect Indians because c their status as Indians shall be inapplicable to them, and t law of the several States shal apply to them in the same manr as they apply to other citizer or persons within their juris- diction. Nothing in this Act, however, shall affect the stat of such persons as citizens of the United States. The pro- visions of this subsection, as amended, shall apply in the ca of a distribution of assets ma either before or after the ame ment of the subsection.

[New language is underscored

1958 Act	1964 Amended Act
§11. The constitution and corporate charter adopted pursuant to the Act of June 18,1934 (48 Stat. 984), as amended, by any rancheria or reservation subject to this Act shall be revoked by the Secretary of the Interior when a plan is approved by a majority of the adult Indians thereof pursuant to subsection 2(b) of this Act. [See 25 U.S.C. §§461-479].	§11. The constitution and corporate charter adopted pursuan to the Act of June 18, 1934 (48 Stat. 984), as amended, or any other authority, by any rancheria or reservation subje to this Act shall be revoked b the Secretary of the Interior when a plan is approved by a majority of the adult Indians thereof pursuant to subsection 2(b) of this Act.
§12. The Secretary of the Interior is authorized to issue such rules and regulations and to execute or approve such conveyancing instruments as he deems necessary to carry ou the provisions of this Act.	§12. [Unchanged].
§13. There is authorized to be appropriated not to exceed $509,235 to carry out the provisions of this Act.	§13. There is authorized to b appropriated not to exceed $509,235 such sums as may be necessary to carry out the pro visions of this Act.
APPROVED: August 18, 1958.	APPROVED: August 11, 1964.

Appendix C

CALIFORNIA TERMINATION REGULATIONS

A. 1959 Regulations.	B. 1965 Regulations.
Source: Federal Register of June 9, 1959 at page 4652 ff. 24 F.R. 4652-4654.	Source: Federal Register of August 13, 1965, 30 F.R. 10099, et seq. NOTE: the 1965 regulations were held to be void by a three-judge District Court in Kelly v. U. S. Department of the Interior, 339 F. Supp. 1095 (E.D.Cal. 1972).
§242.1 Purpose and scope.	§242.1 Purpose and scope.
The purpose of this part is to provide policies and procedures governing the distribution of the assets of the following rancherias and reservations in the State of California: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Grinda, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Paskenta, Picayune, Pinoleville, Potter Valley, Quartz Valley, Redding, Redwood Valley, Robinson, Rohnerville, Rumsey, Scotts Valley, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake and Wilton.	The purpose of this part is to provide policies and procedures governing distribution of the assets of rancherias and reservations lying wholly within the State of California.
§242.2 Definitions.	§242.2 Definitions.
§242.2 Definitions. As used in this part, terms shall have the meanings set forth in this section.	§242.2 Definitions. As used in this Part 242, terms shall have the meanings set forth in this section.
(a) "Adult Indian" means any Indian who is an adult under the laws of the State in which he is domiciled. (b) "Distributee" means any Indian who is entitled to receive, under a plan prepared pursuant to section 2 of the Act of August 18, 1958 (72 Stat. 619), any assets of a rancheria or reservation.	(a) "Secretary" means the Secretary of the Interior or his authorized representative. (b) "Commissioner" means the Commissioner of Indian Affairs. (c) "Director" means the Area Director, Bureau of Indian Affairs, Sacramento Area Office, Sacramento, Calif., or his authorized representative. (d) "Adult Indian" means any Indian who is an adult under the laws of the State in which he is domiciled. (e) "Distributee" means any Indian who is entitled to receive any assets of a rancheria or reservation under a plan prepared and approved pursuant to section 2 of the Act of August 18, 1958 (72 Stat. 619), as amended by the Act of August 11, 1964 (78 Stat. 390).

§242.2 (cont.)

(c) "Dependent members", as used in the phrase "dependent members of their immediate families", includes all persons for whose support the distributee is legally liable according to the laws of the State of California and who are related by blood or adoption or by marriage, who are domiciled in the household of the distributee, and who receive more than one-half of their support from such distributee.

(d) "Formal assignment" means any privilege of use and/or occupancy of the real property of a rancheria or reservation which is evidenced by a document in writing.

(e) "Informal assignment" means any privilege or claim of privilege of use and/or occupancy of the real property of a rancheria or reservation, not based on an instrument in writing.

(§242.3 of the 1959 regulations relates to the formulation of distribution plans for the rancherias specifically named in §242.1. It corresponds to §242.4 of the 1965 amended regulations.)

§242.2 (cont.)

(f) "Dependent member," as used in the phrase "dependent members of their immediate families," means all persons of Indian descent not sharing directly in the distribution of rancheria or reservation assets who: (1) Are related to the distributee by blood or adoption or by marriage, including common law or Indian custom marriage; (2) are domiciled in the household of the distributee; (3) are not members of any other tribe or band of Indians; and (4) receive more than one-half of their support from such distributee or for whose support a distributee is legally liable according to the laws of the State in which he is domiciled.

(g) "Formal assignment" means any privilege of use and/or occupancy of the real property of a rancheria or reservation which is evidenced by an instrument in writing.

(h) "Informal assignment" means any privilege of use and/or occupancy of the real property of a rancheria or reservation, not based on an instrument in writing.

(i) "Organized rancheria or reservation" means any tribe, band, or community of Indians organized to conduct its affairs pursuant to an organic document containing membership criteria approved by the Secretary.

(j) "Unorganized rancheria or reservation" means any tribe, band, or community of Indians which does not have an organic document containing membership criteria approved by the Secretary.

§242.3 Requests for distribution.

§242.3 Requests for distribution.

(a) *Unorganized rancheria or reservation.* Upon receipt of a written request from an adult Indian or Indians of an unorganized rancheria or reservation for the distribution of the assets of the rancheria or reservation, the Director shall prepare a list of Indians in the following categories:

(1) Those who have allotments on the rancheria or reservation;

(2) Those who hold formal assignments;

(3) Those who reside on the rancheria or reservation pursuant to an informal assignment;

(4) Those not in the above categories who have resided for a period of at least three consecutive years immediately preceding receipt of the request as provided for in the introductory text of this paragraph, on the rancheria or reservation not set aside for a designated group of Indians.

§242.3 (cont.)

(3) The dependent members of the immediate families of those persons in subparagraphs (1), (2), (3), and (4) of this paragraph.

(b) *Organized rancheria or reservation.* Upon a formal request from the official governing body of the rancheria or reservation, the Director shall prepare a list of the members of such organized group in accordance with the criteria set forth in the approved organic document of the group.

(c) *Eligibility to participate.* The adults whose names appear on a list prepared in accordance with paragraph (a) or (b) of this section shall constitute those persons eligible to vote on the issue of whether a distribution plan is to be developed. A list shall not include the name of any person who is a member of any Indian tribe, band, or community other than the one associated with the rancheria or reservation which has requested the distribution program.

(d) When the Director is satisfied that the list is complete, he shall publish it once weekly for 3 successive weeks in a local newspaper. Within 15 days after the date of the last publication of the list, anyone may protest in writing the omission of a name from the list or the inclusion of any name thereon. His written protest together with arguments to sustain it shall be presented to the Director who will render his decision, which shall be final. After all protests have been heard and have been duly disposed of, the Director shall hold an election on whether the distribution of rancheria or reservation assets shall be made. Except as otherwise provided in section 1 of the Act of August 12, 1958, as amended,[1] if a majority of the eligible voters vote for distribution, a distribution plan shall be prepared in accordance with the applicable portions of this Part 242.

[1] Sec. 1 of the Act of August 18, 1958 (72 Stat. 619), as amended makes mandatory the distribution of the land and assets of the following rancherias and reservations: Alexander Valley, Auburn, Big Sandy, Big Valley, Blue Lake, Buena Vista, Cache Creek, Chicken Ranch, Chico, Cloverdale, Cold Springs, Elk Valley, Guidiville, Grinda, Greenville, Hopland, Indian Ranch, Lytton, Mark West, Middletown, Montgomery Creek, Mooretown, Nevada City, North Fork, Pauma, Pinoleville, Powersville, Potter Valley, Quartz Valley, Rancheria, Redwood Valley, Robinson, Roberville, Rudiava, Santa Ynez, Smith River, Strawberry Valley, Table Bluff, Table Mountain, Upper Lake, Wilton.

1959 Regulations

§242.3 Plan of distribution.

§ 242.3 Plan of distribution.

The plan of distribution to be prepared under section 2 of the Rancheria Act shall be in writing and may be prepared by those Indians who lived formal or informal assignments on the rancheria or reservation involved, or by those Indians who have or claim to have some special relationship to the particular rancheria or reservation involved, not allowed by Indians in general, or may be prepared by the Secretary of the Interior after consultation with such Indians. Any such plan must be approved by the Secretary before submission to the distributees for approval. Such plan shall provide for a description of the class of persons who shall be entitled to participate in the distribution of the assets and shall identify, by name and last known address, those persons to be distributees under the plan and the dependent members of their immediate family.

§242.4 General notice.

§ 242.4 General notice.

When the Secretary has approved a plan for the distribution of the assets of a rancheria or reservation, a general notice of the contents of such plan shall be given in the following manner:

(a) Service by regular mail, or in person, of a copy of the plan to those who participated in the drafting of the plan, and to the distributees named in the plan.

(b) Service by regular mail, or in person, of a copy of the plan to all other persons who have indicated by a letter addressed to the Area Director that they claim an interest in the assets of the rancheria or reservation involved.

(c) Posting a copy of the plan in a public place on the rancheria or reservation, and in the Post Office serving the rancheria or reservation.

1965 regulations

§242.4 Plan of distribution.

§ 242.4 Plan of distribution.

(a) The plan of distribution provided for in section 2 of the Act of August 18, 1958, as amended, shall be in writing and may be prepared by:

(1) Those adult Indians whose names appear on the final list as provided for in § 242.3; or

(2) By the governing body in the case of an organized rancheria or reservation; or

(3) By the Secretary of the Interior after consultation with such Indians.

(b) The primary source of distributees shall be those persons whose names appear on the list prepared in accordance with § 242.3. Additional names may be added to the list upon the approval of a majority of the adults included on the original list referred to above: *Provided*, That no new name shall be added without the approval of the individual and of the Director. In the event of a per capita distribution of any rancheria or reservation funds, all persons whose names appear on the final list prepared pursuant to § 242.3, and all persons whose names have been added thereto, shall be entitled to participate. Any distribution plan must be approved by the Secretary before it is submitted to the adult distributees for approval. Such plan shall provide for a description of the assets and shall identify, by name and last known address, those persons to be distributees under the plan and the dependent member of their immediate families: *Provided*, That for the purpose of this section, any person who is a member of any other tribe or band of Indians shall not be considered a dependent member of a distributee's immediate family.

§242.5 General notice.

§ 242.5 General notice.

When the Secretary has approved a plan for the distribution of the assets of a rancheria or reservation, notice of the contents of such plan shall be given in the following manner:

(a) A copy of the plan shall be delivered in person or mailed to the last known address of those who participated in the drafting of the plan and the distributees named in the plan.

(b) A copy of the plan shall be delivered in person or mailed to the last known address of all other persons who have indicated by a letter addressed to the Director that they claim an interest in the assets of the rancheria or reservation involved.

(c) Posting a copy of the plan in a public place on the rancheria or reservation and in the post office serving the rancheria or reservation.

(d) Publication of the general contents of the plan once weekly for three successive weeks in one or more local newspapers.

1959 Regulations

§242.5 Objections to plan.

§ 242.5 Objections to plan.

Any Indian who feels that he is unfairly treated in the proposed distribution of the property of a rancheria or reservation as set forth in a plan prepared and approved under § 242.3 may, within 30 days after the date of the general notice, submit his views and arguments in writing to the Area Director, Bureau of Indian Affairs, P.O. Box 749, Sacramento, California. The Area Director shall act for persons who are minors or non compos mentis if he finds that such persons are unfairly treated in the proposed distribution of the property. Such views and arguments shall be promptly forwarded by the Area Director for consideration by the Secretary.

§242.6 Referendum

§ 242.6 Referendum.

After consideration by the Secretary of all views and arguments, the plan or a revision thereof, and a notice of a referendum meeting, shall be sent by registered mail, return receipt requested, to each distributee. Thereafter, the Secretary shall cause a referendum to be held at a general meeting of the distributees, at the time and place set forth in the notice of the meeting. Any adult Indian distributee may indicate his acceptance or rejection of the plan by depositing his ballot in a ballot box at the meeting place or by mailing his ballot to the Area Director, Bureau of Indian Affairs, P.O. Box 749, Sacramento, California, clearly marked on the envelope the rancheria or reservation referendum for which the ballot is being submitted. All ballots which are mailed shall be posted so as to be received at least two days before the date set for the referendum meeting. Ballots received thereafter shall not be accepted. At the close of the meeting all ballots shall be counted; and if the plan is approved by a majority of the adult Indian distributees, it shall be final and shall take effect on the date approved.

1965 Regulations

§242.6 Objections to plan.

[The 1965 regulations here remain substantially unchanged from the corresponding provisions in the 1959 regulations.]

§ 242.6 Objections to plan.

Any Indian who feels that he is unfairly treated in the proposed distribution of the assets of a rancheria or reservation as set forth in a plan prepared and approved in accordance with the provisions of this part 242 may, within thirty (30) days after the date of last publication under § 242.5(d), submit his views and arguments in writing to the Director. The Director shall act for persons who are minors or non compos mentis if he finds that such persons are unfairly treated in the proposed distribution of the assets. Such views and arguments shall be promptly forwarded by the Director for consideration by the Secretary.

§242.7 Referendum.

§ 242.7 Referendum.

After consideration by the Secretary of all views and arguments, a copy of the plan or a revision thereof and a notice of a referendum meeting shall be sent by certified mail, return receipt requested, to each distributee. Thereafter, the Secretary shall cause a referendum to be held at a general meeting of the distributees, at the time and place set forth in the notice of the meeting. Each adult Indian distributee may indicate acceptance or rejection of the plan by depositing his or her ballot in a ballot box at the meeting place or by mailing his or her ballot to the Director, in which case the envelope shall be clearly marked to identify the rancheria or reservation referendum for which the ballot is being submitted. All ballots which are mailed must be received by the Director at least 2 days before the date set for the referendum meeting. Ballots received thereafter shall not be accepted. At the close of the meeting all ballots shall be counted and if the plan is approved by a majority vote of the adult Indian distributees, it shall be effective on the date approved. Subject to modification as provided in § 242.8 the plan shall thereupon be put into effect and its provisions carried out as expeditiously as possible, including distribution of assets as therein provided.

1959 Regulations

There are no provisions in the 1959 regulations which correspond to §242.8 of the 1965 regulations.

§242.7 Beneficial interest.

§ 242.7 Beneficial interest.

Upon approval of a plan or a revision thereof by the Secretary of the Interior, and acceptance by a majority of the adult Indian distributees, the distribution listed in the plan shall be the final list of Indians entitled to participate in the distribution of the assets of the rancheria or reservation and the rights or beneficial interests in the property of each person whose name appears on this list shall constitute vested property which may be inherited or bequeathed but shall not otherwise be subject to alienation or encumbrance before the transfer of title to such property.

§242.8 Organized rancheria or reservation.

§ 242.8 Organized rancheria or reservation.

When a plan for the distribution of the assets of a rancheria or reservation organized under section 16 of the Indian Reorganization Act (25 U.S.C. 476) shall have been approved and adopted at a referendum held for the purpose, the governing body of such constitutional rancheria or reservation shall cause a final financial statement to be prepared, including a certificate that all the obligations and debts of said rancheria or reservation have been liquidated or adjusted and that all the assets have been or are simultaneously therewith conveyed to persons or groups authorized by law to receive them which may include any organization under State law. The constitution of the group shall upon receipt of a satisfactory certificate of completion be revoked by the Secretary.

1965 Regulations

§242.8 Modification of plan.

§ 242.8 Modification of plan.

If after approval by the Secretary and the adult distributees it is determined by an appropriate resolution approved by a majority of the adult distributees that a plan of distribution is not in conformity with the wishes of the proposed distributees or that it contemplates acts or actions determined to be undesirable and if modification of the plan of distribution is required to correct the circumstances, such resolution shall be submitted to the Secretary for approval. Approval of the resolution by the Secretary shall be final and the plan of distribution shall be considered modified as of the date of such approval.

§242.9 Beneficial interest.

§ 242.9 Beneficial interest.

Upon approval of a plan, revision, or modification thereof by the Secretary and acceptance by a majority of the adult distributees, the distributees listed in the plan, revision, or modification shall be the final list of Indians entitled to participate in the distribution of the assets of the rancheria or reservation, and the rights or beneficial interests of each person whose name appears on this list may be inherited or bequeathed, but shall not otherwise be subject to assignment, alienation or encumbrance before the transfer by the United States of full legal title to such assets, except with the approval of the Secretary.

§242.10 Organized rancheria or reservation.

§ 242.10 Organized rancheria or reservation.

When a plan for the distribution of the assets of an organized rancheria or reservation has been approved and adopted at a referendum held for that purpose, the governing body of such rancheria or reservation shall cause a final financial statement to be prepared including a certificate that all obligations and debts of said rancheria or reservation have been liquidated or adjusted and that all the assets have been or are simultaneously therewith conveyed to persons, associations, corporations, or other groups authorized by law to receive them. Upon receipt of a satisfactory certificate of completion, the organization document and/or charter shall be revoked by the Secretary.

1959 Regulations.

§242.9 Rancheria or reservation business corporation.

§ 242.9 Rancheria or reservation business corporations.

When a plan for the distribution of the assets of a tribal business corporation has been approved and adopted by a referendum held for the purpose, the Board of Directors, or equivalent, of such Indian business corporation shall cause a final financial statement to be prepared and submitted to the Area Director, including a certificate that all the obligations and debts of said corporation have been liquidated or adjusted and that all the assets of such corporation have been or are simultaneously therewith conveyed to persons or corporations authorized by law to receive them. The charter of the group shall upon receipt of a satisfactory certificate of completion be revoked by the Secretary.

There are no provisions in the 1959 regulations which correspond to §242.11 of the 1965 regulations.

1965 Regulations

There are no corresponding provisions in the 1965 regulations. §242.9 of the 1959 regulations evidently applies to the revocation of the charters of IRA tribes, and to the winding up of their affairs.

§242.11 Sale of unoccupied lands.

§ 242.11 Sale of unoccupied land.

Sale of any rancheria or reservation by the Secretary pursuant to the authority contained in section 5(d) of the Act of August 18, 1958, as amended, shall be conducted as nearly as practicable in the manner prescribed in that portion of Part 121 of this title which applies to the sale of individually owned trust or restricted land.

[NOTE: Subdivision (d) to §5 of the Rancheria Act was added by the Act of August 11, 1964, P.L. 88-419, 78 Stat. 390-391].

1959 Regulations

§242.10 Proclamation.

§ 242.10 Proclamation.

When the provisions of a plan have been carried out to the satisfaction of the Secretary, he shall publish in the FEDERAL REGISTER a proclamation declaring that the special relationship of the United States to the reservation or reservation unit to the distributees and the dependent members of their immediate families is terminated. The proclamation shall list the names of the distributees and dependent members of their immediate families who are no longer entitled to any services performed by the United States for Indians because of their status as Indians.

[F.R. Doc. 59-4738; Filed, June 4, 1959; 8:48 a.m.]

[There are no provisions in the 1959 regulations which correspond to §242.13 of the 1965 regulations]

1965 Regulations

§242.12. Notice of termination.

When the provisions of a plan have been carried out to the satisfaction of the Secretary, he shall publish in the FEDERAL REGISTER a notice declaring that the special relationship of the United States to the reservation or reservation unit and to the distributees and the dependent members of their immediate families is terminated. The notice shall list the names of the distributees and the dependent members of their immediate families who are no longer entitled to any services performed by the United States for Indians because of their status as Indians, the fact that all restrictions and tax exemptions applicable to trust or restricted land or interests therein owned by them are terminated, the fact that all statutes of the United States which affect Indians because of their status as Indians shall be inapplicable to them, and that State laws shall apply to them in the same manner as they apply to other citizens.

§242.13 Special instructions.

§ 242.13 Special instructions.

To facilitate the work of the Director, the Commissioner may issue special instructions not inconsistent with the purpose of the regulations in this Part 242 and within any authority delegated to him.